

An Orthodox Canonical Commentary on the Agreed Statement of the NAOCTC: “The Pastoral Care of Mixed Marriages: Neither Yours nor Mine—but Ours”

Introduction

The agreed statement summarizes at its outset the significant progress made in the last fifty years in Orthodox/Catholic relations, specifically emphasizing the mutual recognition of the ecclesial reality of baptism within both Churches. At the same time, the statement cautions against false irenicism and the painful estrangement between the two Churches, often expressed in the reality of families in mixed marriages between Orthodox and Catholics.

The summary of progress includes a survey of developing understandings reflected in the two joint documents and an independent set of formal recommendations produced by the Orthodox-Catholic Theological Consultation, as well as the 1990 pastoral document dealing with mixed marriages issued by the Joint Committee of Orthodox and Catholic hierarchs in Johnstown.

These joint statements have progressed from discouraging mixed marriages based on theological and pastoral problems to acknowledging their sacramental nature and vocation, as well as the necessity of their pastoral care, particularly in the spiritual formation of children. One of the most important mutual understandings contained in these documents is the joint recognition that in both traditions sacramental marriage takes place in an ecclesial context through the ministry of the Church. On the other hand, these documents also acknowledge canonical differences regarding the constitutive elements necessary for the formation of marriage and its dissolution.

The new statement, “The Pastoral Care of Mixed Marriages: Neither Yours nor Mine—but Ours,” seeks to respond to complex changes over the past three decades since the 1990 Johnstown document by proposing that “instead of dividing the parties in a mixed marriage into yours and mine, to adopt, as a starting principle, a joint solicitude for the spouses and embark on the pastoral care of each mixed marriage as our concern.” This presupposition underlies the new statement’s understandings and recommendations concerning mixed marriages.

The main subjects covered in the statement’s seven recommendations include both Churches’ fundamental shared assumptions regarding the sacredness and sacramentality of all Christian marriage; canonical differences regarding the establishment of marriage and how these differences may be addressed regarding mixed marriage; shared canonical understandings on the lifelong nature of marriage and how differences may be reconciled; the importance of the spiritual formation of children; and the need for joint and continuing pastoral care.

A shared understanding of Christian marriage

In describing marriage's sacredness and sacramentality, the new statement affirms a shared understanding of Christian marriage as a vocation from God, in which the liberating effect of divine love, a gift of the Holy Spirit, is experienced through human love. This love is expressed through commitment to marital unity as a sacred union between a man and a woman, lifelong fidelity and sharing of all life in partnership, and mutual assistance towards salvation based on a shared faith in Jesus Christ. Both traditions affirm that spousal love blessed by the Holy Spirit enables the couple to reflect the love between Christ and the Church as a mystery of the Kingdom of God and an opportunity to fulfill the vocation of the spouses to salvation. Similar affirmations are contained in section one of the recent issuance of the 2016 Orthodox Holy and Great Council in Crete, *The Sacrament of Marriage and Its Impediments*.

The Orthodox canonical definition of marriage

Most modern Orthodox works of canon law define marriage as “a union of a man and woman, a consortium for an entire lifetime, and a sharing of divine and human law either through a blessing, crowning, or contract” (Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάρφεια καὶ συγκλήρωσις τοῦ βίου παντός, θείου τε καὶ ἀνθρωπίνου δικαίου κοινωνία εἴτε δι’ εὐλογίας εἴτε διὰ στεφανώματος ἢ διὰ συμβολαίου). The first three parts of the definition were formulated by Herennius Modestinus, a Roman legal expert or jurist of the third century, regarded as the last of the classical jurists. This formula is found in the *Digest*, *Code*, and *Institutes* of the Byzantine emperor Justinian the Great (r. 527-565) as well as in the late ninth century *Basilika*, the major Byzantine imperial legal code (*Basilika* 28. 4. 1). The Church received and adopted this civil formula in defining marriage canonically and added the last part of the definition, the formula describing the means by which marriages are formed: “through a blessing, crowning, or contract.”

The establishment of marriage

The new agreed statement acknowledges differences between the two Churches regarding the establishment of marriage. The Catholic Church views marriage as a covenant or contract arising out of the irrevocable consent of a man and a woman to establish between themselves a partnership of the whole life. Marriage is seen as rooted in the exchange of consent of the man and woman, which is thus considered a constitutive element. Ecclesiastical intervention normally takes the form of the presence and blessing of a priest, but also allows a deacon or even – in special circumstances – a non-ordained person to act as an official representative of the Church. Indissolubility is regarded as an effect of consummation. As stated by the Catholic canonist Ladislav Örsy, “consent makes the marriage, but consummation makes it indissoluble.”¹

¹ Ladislav Örsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions* (Wilmington, DE: Michael Glasier, 1986), 68.

In Orthodoxy, the formation of marriage by canonical definition occurs through a process involving a contract, a betrothal, and a crowning, each a form of marital union that gradually builds to completeness. The services of betrothal and crowning are celebrated together, and each of these involves an epiclesis by a priest or bishop to establish a marital union. In this context, a “contract,” namely the exchange of matrimonial consent to form a partnership for a lifetime, is a form of marriage that is the basis for the reception of the sacerdotal blessings of betrothal and crowning. Since sacramental marriage is canonically established through sacerdotal blessing, Orthodox canon law does not rely on the sexual relations of the spouses for a “consummation” to establish the union as lifelong.

The first two recommendations of the agreed statement

Consequently, in the first two recommendations for mixed marriages, the statement attempts to reconcile these different ways in which the two Churches affirm that the ecclesial context is constitutive of the Christian sacrament of marriage.

The first recommendation is a reaffirmation of the Consultation’s original statement on marriage in 1971, which expresses what is now standard Catholic canonical practice: the Catholic party of the proposed marriage with an Orthodox party shall be married with the Orthodox bishop or priest officiating, after consultation by the partners with their pastors, and with an official dispensation, for the Catholic partner, from ecclesiastical form (*An Agreed Statement on Mixed Marriage*, November 4, 1971, II.1).

The second recommendation is that Orthodox hierarchs consider the extension of ecclesiastical economy (*oikonomia*)² to Orthodox parties in legal contractual unions that were established through the exchange of matrimonial consent and made with the intention of a lifelong bond in the Catholic liturgical and canonical tradition. Such an economy would be extended solely to the Orthodox spouse for the purpose of their canonical standing in the Orthodox Church, reflected in continued eucharistic participation and subsequent sacraments offered in the life of the Church such as the ability to serve as godparent at a baptism or sponsor at a wedding as well as full participation in parish ministry life, including serving on a parish council and so forth.

Current hierarchical extensions of economy permit an Orthodox Christian’s participation in the services of betrothal and crowning with a baptized non-Orthodox person, while preserving the Orthodox Christian’s continued sacramental participation, a reflection of their ecclesial status in good standing. The recommended hierarchical use of economy similarly addresses the Orthodox party’s participation in the third canonical form of marital union.

² “Ecclesiastical economy” is understood here not as a canonical dispensation, but rather a canonical application, namely an application of canon(s) to a specific case, which when recorded may create a non-binding precedent.

The current guidance for Orthodox clergy in the United States is based generally on the *Guidelines for Orthodox Christians in Ecumenical Relations*, published in 1973 by the Standing Conference of Canonical Orthodox Bishops in the Americas (SCOBA), which states:

Normally, the sacrament of marriage in the Orthodox church takes place only between members of that Church...By application of the principle of *oikonomia*, the Orthodox sacrament of marriage between an Orthodox and a Christian baptized in the Name of the Holy Trinity may be performed.³

The present administration of an Orthodox mystery to those outside of Orthodoxy via ecclesiastical economy (*oikonomia*) seems inconsistent with the restriction of such baptized “Christians” from other mysteries, even as economy is applied with the good of the Church and the salvation of souls in view.

Paragraph 6 of the SCOBA document’s section on marriage reconciles this apparent contradiction in canonical practice:

The intimate relation of the sacraments to the community of faith and grace precludes the participation of non-Orthodox in their celebration. We have already indicated that by *oikonomia* a mixed marriage may be performed for the sake of the Orthodox party. *Oikonomia* does not apply, however, to anyone other than the non-Orthodox Christian party in the marriage. This prohibition applies particularly to non-Orthodox clergymen and Sponsors in the strict sense.⁴

In the paragraph, it is made clear that the economy (*oikonomia*) in the application of the canons applies only in a limited way to the non-Orthodox party. It is the Orthodox spouse that is being allowed the mixed marriage and only under certain circumstances, where their non-Orthodox fiancée makes certain agreements regarding the children. This limited application of economy is reflected by the fact that the non-Orthodox party continues to have their same ecclesial status before the marital union, namely of not being in good standing with the Church and thus, not being admitted to Communion, unable to receive other mysteries, and restricted from parish life (including the election of parish councils and so forth).

Consequently, the second recommendation of the new agreed statement is that Orthodox hierarchs consider extending an analogous economy (*oikonomia*) to those Orthodox who marry

³ Robert G. Stephanopoulos, *Guidelines for Orthodox Christians in Ecumenical Relations* (Standing Conference of Canonical Orthodox Bishops in America), 19–20.

⁴ Robert G. Stephanopoulos, *Guidelines for Orthodox Christians in Ecumenical Relations* (Standing Conference of Canonical Orthodox Bishops in America), 20.

using the third form of marriage recognized in the Orthodox canonical definition, namely a legal contractual union that has been established through the exchange of matrimonial consent and made with the intention of a lifelong bond.

Lifelong fidelity, divorce, and remarriage

Regarding lifelong fidelity and sharing of all life in partnership, the statement affirms that both Churches share a common teaching that the couples enter marriage for a lifetime and that no Christian marital union can be formed as a temporary arrangement. However, the statement also acknowledges differences, namely on the topics of divorce and remarriage.

On the one hand, when dealing with failed consummated marriages, the Catholic Church does not permit divorce and remarriage, but conducts inquiries as to whether there may have existed some initial defect in the marriage covenant that provides grounds for annulment. On the other hand, Orthodox hierarchs recognize the spiritual death of failed marriages, with such a recognition grounded in a pastoral understanding of the factors of frailty and error that too often characterize human life.

The stated grounds for ecclesiastical divorce used in the recommendations of Orthodox spiritual courts and hierarchical permissions granted for remarriage are considered instances in which Orthodox hierarchs bestow the mercy of God, dissolving marriages, or rather recognizing those whose spiritual foundation has already been destroyed through human frailty. Such hierarchal permissions for remarriage allow for unions of divorced spouses, which include marriages to Catholics, who may or may not be divorced themselves. A marriage that is not completely dissolved constitutes an absolute impediment to entering into matrimony. In 2016, the Orthodox Holy and Great Council emphasized this point: “A marriage that is not completely dissolved or annulled and a third marriage constitute absolute impediments to entering into marriage, according to Orthodox canonical tradition, which categorically condemns bigamy and a fourth marriage,” (*The Sacrament of Marriage and Its Impediments*, II.2).

During the early Byzantine period, the Church in the East received and adopted the grounds for divorce established in imperial law as its own, especially *Novel 117* enacted under Emperor Justinian the Great (r. 527-565) as well as certain other legislation. Each autocephalous church further developed, changed, and varied these grounds, which were incorporated into canonical works and in canonical practice through the decisions of church courts and holy synods.⁵ The Church performed remarriages for those whose marriages were dissolved in civil and/or church courts (depending on whether the state was Christian, Islamic, or secular).

In modern practice, although some Orthodox canonists and churches have accepted a distinction between annulment and dissolution of marriage, this distinction does not exist in Byzantine sources, which contain separate grounds of dissolution for unions formed through “blessing” or

⁵ Orthodox canonists have collected considerable bodies of such decisions.

formal betrothal and those by “crowning.” Indeed, though the recent issuance by the Great and Holy Council reflects this modern distinction, the use of such terminology as an “annulled” marriage (ἀκυρωθείς γάμος) in no way implies an annulment process as in Roman Catholicism; on the contrary, the term quite literally describes an “invalid marriage” (ἄκυρος γάμος) (e.g., where a false clergyman performed the ceremony and there was no sacerdotal blessing that established the union).

Within this overall canonical framework, Orthodox canonists do not consider the scriptural passages of Matthew 5:31-32 and 19:3-9; Mark 10:2-12; and Luke 16:18 to be metaphysical statements regarding the nature of marriage as an unbreakable contract, but rather as moral standards.⁶ Certainly, though Orthodox theological texts contain affirmations regarding the ideal marriage as lifelong, there are legitimate exceptions made to this moral norm in the canonical life of the Orthodox Church. These exceptions are grounded in a pastoral recognition of the factors of frailty and error that too often characterize human life and that result in the spiritual death of a marriage, the continuance of which in name alone would result in the moral and spiritual harm of the former spouses. According to the canonical practice of the Ecumenical Patriarchate, such divorces are not granted lightly, but rather through the examination of a spiritual court composed of senior presbyters with its decisions issued by the local bishop.

The third recommendation of the new agreed statement is for Catholic hierarchs to seek ways to acknowledge and receive the Orthodox hierarchy’s exercise of their apostolic and pastoral ministry, including when granting permissions for remarriage. Such a reception would be reflected in allowing eucharistic participation in the Catholic Church to divorced Catholic parties remarried in marital unions blessed by Orthodox bishops.

Eucharistic sharing in a mixed marriage

The agreed statement makes an important point regarding the reception of Catholic sacraments:

For the Orthodox, church unity has not yet been achieved and full communion does not exist. The purpose of receiving these sacraments under the unique liturgical circumstances of a mixed marriage is unclear. There remains a concern that the deeper meaning of receiving Holy Communion will be lost, namely, that the mysteries or sacraments are signs of the unity of the church and an integral part of ecclesial life.

This concern reflects the position of the canonical assembly of Orthodox bishops that “the Eucharistic Mystery is the end of unity, not a means to that end, and that therefore, the decisions

⁶ David Heith-Stade, *Marriage as the Arena of Salvation* (Rollinsford, New Hampshire: Orthodox Research Institute, 2011), 36–55.

regarding Holy Communion reached by Christian bodies outside the Orthodox will have no significance or validity for the Orthodox Church or her members.”⁷

The fact that couples from both Churches currently share the sacrament of marriage based on their common baptism speaks to a shared underlying ecclesial reality, but nevertheless an imperfect one that does not allow the sharing of the Eucharist by the Orthodox Church with the Catholic spouse. Under the unique circumstances of a mixed marriage, if offered to or even counselled for Orthodox spouses under such conditions by Catholic pastors, there is a strong possibility the precious and most holy Body and Blood of our Lord and God and Savior Jesus Christ may become viewed as a sacred object, or even a commodity, being offered more freely by one partner’s Church, as if to attain some material advantage over a competitor. Consequently, the agreed statement contains a caution taken from the Catholic *Ecumenical Directory* that the discipline of Eastern churches should be respected (§122). In addition, recommendations are made for the development and updating of guidance for pastors of both Churches.

Children and the family of a mixed marriage

Unlike Roman Catholicism, the existence of the marital union is not made dependent on a primary or specific purpose in the Orthodox Church’s canonical definition of marriage; and indeed, no purpose for marriage is given in the latter.⁸ According to the Orthodox definition, there can be an Orthodox marriage without the procreation of children, or even the attempt to procreate children. There can also be an Orthodox marriage with an agreement between the spouses to live as brother and sister. Assisting each other towards mutual salvation is not confined to marriage but exists throughout the community of the faithful. The need to avoid sexual immorality is common to all. Consequently, the area of marriage’s specific purpose, whether for procreation or as a remedy for fornication or for mutual salvation or any combination thereof, is a matter of theological opinion and not of doctrine, namely the teaching of a specific dogma. The varying theological opinions of the Fathers of the Church indeed reflect this flexible approach. Furthermore, no consensus currently exists at the Pan-Orthodox level and

⁷ Robert G. Stephanopoulos, *Guidelines for Orthodox Christians in Ecumenical Relations* (Standing Conference of Canonical Orthodox Bishops in America), 17–18.

⁸ Such a purpose in Roman Catholic canonical legislation can be seen in the 1983 *Code of Canon Law (Codex Iuris Canonici)*: “Can. 1055 §1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized. §2. For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament.” Similarly, the same emphasis can be found in canon 776 of the 1990 *Code of Canons of the Eastern Churches (Codex Canonum Ecclesiarum Orientalium)*: “Canon 776 §1. The matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of the offspring. § 2. From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace. § 3. The essential properties of marriage are unity and indissolubility, which in a marriage between baptized persons obtain a special firmness in virtue of the sacrament.”

the matter is often left to pastoral guidance, particularly in confession, as a matter to be addressed between husband and wife with the guidance of the father confessor.

Consequently, the statement avoids setting forth a purpose for marriage and uses conditional language that divine love in marriage “*may* [italics added for emphasis] be expressed...in the procreation and nurturing of children” while avoiding absolute statements.

Nevertheless, a significant portion of the agreed statement deals with the spiritual formation of children from a mixed marriage, as both Churches recognize the family as one of the fundamental loci for the faith formation of children. The statement emphasizes that although a decision must be made to raise children in one of the partner’s churches, parents should be unafraid to share the commonalities of their faith and be open and respectful where their faith diverges. The appreciation of diversity can provide a positive model for childhood development and membership in one Church does not necessarily exclude participation in the life of the other Church. A child should be made aware of the faith traditions of both Churches, even as the parents decide how to approach such an awareness together.

Such an approach is consistent with the current guidance for Orthodox clergy in the United States based on the *Guidelines for Orthodox Christians in Ecumenical Relations*, which states:

It is the obligation of the parents to nurture their children in all things. The religious education of children is the right and the responsibility of both parents. It cannot be totally limited to one or the other parent. Pastors should respect the conscience of both parties in their plans for the religious rearing of their children. No prior agreement which would exclude the possibility of raising the children in the Orthodox Faith should be entered into by the Orthodox party. Every reasonable effort should be made to raise the children as Orthodox Christians.”⁹

Consequently, in the remaining recommendations, the statement proposes that relevant materials for Christian marriage and family life be updated and jointly developed, both for the guidance of the clergy and for the use of the people involved in Orthodox-Catholic marriages, and that these materials accurately reflect both the pastoral preparation and the decision-making required prior to any wedding, not just mixed marriages, to avoid indifferentism and spiritual confusion.

⁹ Robert G. Stephanopoulos, *Guidelines for Orthodox Christians in Ecumenical Relations* (Standing Conference of Canonical Orthodox Bishops in America), 21–22.

Conclusion

Protecting the sacredness of Christian marriage has always been crucially important. Unity achieved through the sacrament of marriage is an essential spiritual force and can support the attainment of salvation for husband and wife as well as ensure the safety and spiritual formation of any children. Toward these ends, the statement recommends that both Churches adopt a joint solicitude and pastoral care of each mixed marriage as a common concern. Together, an attitude of mutual coordination and respect should imbue both Churches' understandings of mixed marriage and inform the guidance given to pastors at the parish level. The pastoral care of mixed marriages is neither yours nor mine, but ours.